

The EU Audiovisual Media Services Directive and its transposition into national law – a comparative study of the 27 Member States

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Member State: Finland

Compilation of Acts

Important Notice

This text is an unofficial translation conducted at the University of Luxembourg in the framework of a research project on the transposition of the “**Audiovisual Media Services Directive**” in the Member States of the European Union.

The original legal acts which Member States notified to the European Commission as national execution measures were retrieved from official national databases. In order to focus on the core of the research project, several national legal acts have been shortened to include only those provisions of relevance for the study. Subsequently, the modified acts were translated by a translation agency external to the university.

The translations only serve the purpose of being an information source; there is no guarantee whatsoever that the translations correctly correspond to the original versions of the laws. Therefore, evidently, the texts have no legal value. The original, as well as the translated version of the legal acts, are available at: www.medialaw.lu, where additional information on the comparative study may be found.

Member State: Finland

Act No. 305 Amendment of Section 1 of the Act adopted by the Government

Official Journal: Suomen Saadoskokoelma (SK)

Adopted in Helsinki on the 20th of April 2010

In accordance with Government decree Section 1 of the Act adopted on the 28th of February 2003 (175/2003) is modified

Paragraph 1 of the Act (970/2007), as follows:

Section 1

Government Organisation

The Government has the following ministries:

- 1) Prime Minister's Office;
 - 2) Ministry for Foreign Affairs of Finland;
 - 3) Ministry of Justice;
 - 4) Ministry of the Interior;
 - 5) Ministry of Defence;
 - 6) Ministry of Finance;
 - 7) Ministry of Education and Culture;
 - 8) Ministry of Agriculture and Forestry;
 - 9) Ministry of Transport and Communications;
 - 10) Ministry of Employment and the Economy;
 - 11) Ministry of Social Affairs and Health;
 - 12) Ministry of the Environment.
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This Act comes into force on the 1st day of May 2010. After this Act comes into force, anything which has been previously established pertaining to the Ministry of Education will pertain to the Ministry of Education and Culture. Activities necessary to implement this Act can be started before the Act comes into force.

Act No. 306 Amendment and temporary amendment to the Act on Television and Radio Operations Adopted in Helsinki on the 30th day of April 2010

In accordance with Government decree

Section 1 of the Act on Television and Radio Operations (744/1998) adopted on the 9th day of October 1998 is repealed

Section 1

2—6, 13, 16 and Section 19, Chapter 4 as well as Sections 35 and 38, in such part as they appear in Section 3, 394/2003 and 1068/2007, are referred to in Section 4, 394/2003 and 1251/2006, Section 6, 394/2003, Section 13, 1190/2005, Section 16, 394/2003,

Section 19, 778/2000 and Section 35, 1539/2001, are amended, and a new Section 12 a is temporarily added to the Act as follows:

Section 2

Definitions

In this Act:

- 1) **public** shall refer to a freely composed group receiving programmes as well as to a pre-determined group of considerable size receiving a message;
- 2) **audiovisual programme** shall refer to a film, television programme, communication of an event to the public, or other similar transmission composed primarily of moving pictures and sound;
- 3) **television broadcasting** shall refer to the initial, simultaneous transmission of scheduled television programmes to the public;
- 4) **subscription programme service** shall refer to audiovisual programmes available to the public based on a specific list of programmes subscribed to;
- 5) **audiovisual media service** shall refer to television broadcasts or subscription service programmes offered to the public for a fee;
- 6) **audiovisual media service broadcaster** shall refer to a party which has editorial responsibility for the composition of the audiovisual media service;
- 7) **radio programme** shall refer to a news broadcast, discussion programme, music programme or other presentation composed solely of sound;
- 8) **programming** shall refer to a pre-selected composition of audiovisual or radio programmes;
- 9) **television broadcaster** shall refer to a party who transmits television programmes or has them transmitted by a third party;
- 10) **radio broadcasting** shall refer to simultaneous broadcasting of scheduled radio programmes;

11) **radio broadcaster** shall refer to a party who has editorial responsibility for the content of radio programmes referred to in Subsection 7 and who transmits radio programmes or has them transmitted by a third party;

12) **independent producer** shall refer to a producer of television programmes wherein an individual audiovisual media service broadcaster controls at most 25% of the share capital or several broadcasters at most 50% and, during the past three years, has produced no more than 90 % of its programmes for the same audiovisual media service broadcaster;

13) **sponsorship** shall refer to any contribution made by an entity not engaged in television or radio broadcasting or in the production of audiovisual works to finance programmes broadcast on television or radio with the intention of promoting the sale of goods or services or increasing name recognition;

14) **advertising** shall refer to any form of announcement in television or radio broadcasting which is not sponsorship or product placement and is transmitted in return for payment or other consideration in order to promote the sale of goods or services or increase name recognition;

15) **teleshopping** shall refer to a television broadcast offering the purchase or sale of goods or services to the public;

16) **commercial communications** shall refer to advertising, teleshopping, sponsorship, product placement or other communications promoting the sale of goods or services or the public image of a natural person or organization or foundation engaged in financial activities.

Section 3

Scope of Application

This law shall be applied to audiovisual media services made available to the public by a natural person or an organization or foundation located in Finland which can be received in one or more member states of the European Economic Area or states which are parties to the European Convention on Transfrontier Television (Finnish Treaty Series 1994/87), hereinafter referred to as the Council of Europe Convention on Transfrontier Television, as well as retransmission of television and radio programmes as described in Section 38.

This Act applies to radio broadcasting using a radio frequency granted by Finland or a distribution network located in Finland.

Section 4

Restrictions in the Scope of Application

This Act does not apply to Sections 18 and 38 with the exception of:

1) broadcasting in which the audiovisual media services or radio broadcasts can be received only at educational institutions, hospitals, hotels or other similar institutions;

or

2) temporary radio broadcasting for a period of no more than three months by transmission of freely propagating radio waves if the radiation power of the transmitter used is no more than 50 watts.

This Act does not apply to audiovisual media services where the number or repetitiveness of programmes is irregular and is not the primary purpose of the service, and is not an electronic version of a newspaper or magazine.

Sections 10 and 11, Section 13 Subsection 1-6 and Sections 14, 16 and 17 shall not apply to activities referred to in Section 7, Subsection 2, and Articles 1 and 2 of Subsection 3.

Sections 10, 11, 13 and 14 shall not apply to activities referred to in Section 7, Subsection 3, Article 3 of this Act.

Section 5

Establishment

The audiovisual media service producer is considered to be located in Finland if its primary place of business is in Finland and decisions regarding the programme schedule or the programmes to be broadcast are made in Finland.

The audiovisual media service is also considered to be located in Finland if:

- 1) its primary place of business is in or decisions regarding its programme schedule or the programmes to be broadcast are made in the European Economic Area or a state that is a party to the Council of Europe Convention on Transfrontier Television, and a significant portion of employees are in Finland;
- 2) a significant portion of its employees work in various states in the European Economic Area or in a state that is a party to the Council of Europe Convention on Transfrontier Television, and its primary place of business is in Finland;
- 3) if a significant number of employees do not work in even one state in the European Economic Area or a state that is a party to the Council of Europe Convention on Transfrontier Television, but the company was established according to Finnish law and has significant financial interests in Finland; or
- 4) if its primary place of business is in a state in the European Economic Area or in a state that is a party to the Council of Europe Convention on Transfrontier Television, but decisions regarding the programme schedule or the programmes to be broadcast are made in another state, or if the situation is reversed, e.g. a significant portion of employees works in Finland.

Section 6

Establishment in certain exceptional cases

A television broadcaster not located in the European Economic Area or in a state that is a party to the Council of Europe Convention on Transfrontier Television is considered to be located in Finland if it uses:

- 1) a satellite signal of a uplink station located in Finland; or
- 2) satellite capacity owned by a Finnish company.

Section 12 a

Extension of Programme Licence

Given a compelling reason related to the development of broadcasting or appropriate use of frequencies, the licensing authority may grant an extension until no later than the end of 2016 of licences which permit television and radio broadcasting as well as telecommunications requiring a licence in multiplex B or C referred to in Subsection 1 of the attachment to Government decree (680/2007) regarding the use of designated frequencies.

Granting a licence extension referred to in aforementioned Subsection 1 must be based on criteria agreed to unanimously by the licence holders.

Section 13

Assignment of a licence to another party and changes in effective control

Television and radio broadcasting licences cannot be assigned to another party. The license becomes invalid if the license holder assigns it to another party. The licensing authority must provide a decision confirming that the license is no longer valid.

If practical control of the license effectively changes to another party, the licensing authority may accept the change as provided in Subsection 4 or cancel the licence as provided in Subsection 5. The aforementioned shall also apply if the licence holder's effective control of the licence changes in such a way that the licence holder can no longer be considered a television or radio broadcaster as defined in Section 2.

Any assignment or change defined in aforementioned Sections 1 and 2 must be reported immediately to the licensing authority. The licence holder may request a preliminary decision. The licensing authority must render the decision 1192 No. 306 no later than two months after the notice or application was received by the authority.

If the change in effective control of the licence is a result of a merger or acquisition which must be reported to the Finnish Competition Authority as required by the Act on Competition Restrictions (480/1992) or to the Commission as required by Council Regulation (EC Merger Regulation) on the control of concentrations between undertakings, (EC) No. 139/2004, the licensing authority must render its decision no later than two months after the legal settlement of the merger or acquisition.

The licensing authority may accept a change in effective control if it is clear that:

- 1) requirements for granting a licence as set forth in Section 10 have been fulfilled; and
- 2) broadcasting is continuing in accordance with terms of the licence.

With the exception of instances referred to in Subsection 4 the licencing authority must rescind the licence if it is found that effective control has changed.

Internal transfer of a licence from or to a parent company or one of its wholly owned subsidiaries within a concern is not considered grounds for invalidating a licence. The licensing authority must be notified immediately of such a transfer. If a licence holder is declared bankrupt the licence shall become invalid immediately.

Section 16

European composition of programmes

A television broadcaster must reserve a majority of its annual broadcast time for European programmes. News, sporting events, competition and game shows, advertising, text television broadcasts or teleshopping are not considered part of such time.

More details, in accordance with Directive 89/552/EEC of the European Parliament and of the Council on the coordination of certain provisions of law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) Article 1, of what types of programmes are considered “European” as defined in Subsection 1 will be provided by Government decree.

A subscription programme service provider must promote the availability of European works.

Section 19

Programmes detrimental to the development of minors

TV broadcasters must ensure that audiovisual programmes which may be detrimental to the development of minors due to violence or sexual content, by causing terror, or for comparable reasons shall be broadcast at a time when minors do not normally watch programmes.

If a television broadcaster transmits a programme referred to in Subsection 1, notification must be made before the broadcast. Notification is not necessary if an icon denoting potential harm to minors is visible throughout the broadcast.

Subsections 1 and 2 do not apply to programmes which require a decoding device for reception. Measures for the protection of minors with regard to subscription programme services are regulated by the Classification of Audiovisual Programmes (775/2000) Chapter 4.

Commercial Communications

Section 21

General principles

Commercial communications must be clearly identifiable.

Picture or voices of persons regularly appearing in news or current affairs broadcasts may not be used in commercial communications. Best practices in marketing are set forth in the Consumer Protection Act (38/1978) Chapter 2, Subsection 2.

Section 22

Placement of television advertising and teleshopping broadcasts

Television advertising and teleshopping broadcasts must be separated from audiovisual programming by a recognizable sound or picture or by splitting the image space.

Advertising and teleshopping broadcasts must be placed between audiovisual programmes.

They may also be placed in the middle of programmes if this can be done without violating the aesthetic integrity of the audiovisual work and the rights of copyright holders.

During audiovisual programmes composed of individual sections, or sports or other audiovisual programmes which include pauses or intervals, advertisements or teleshopping broadcasts may be placed only between the sections or during pauses or intervals.

Single advertisements and teleshopping broadcasts are forbidden except during sports broadcasts.

Section 23

Interruption of certain audiovisual programmes with advertisements

Television broadcasting of films, made-for-TV movies, news broadcasts and childrens' programmes may be interrupted by advertisements or teleshopping broadcasts at approximately 30 minute intervals appropriate to each given schedule.

Children's programmes may be interrupted by advertisements or teleshopping broadcasts if the programme's scheduled duration is more than 30 minutes.

Television broadcasts of religious ceremonies may not be interrupted by advertisements or teleshopping broadcasts.

Section 24

Marketing of certain products

Advertising of tobacco products is regulated by the Tobacco Act (693/1976) intended to decrease smoking. Advertising and marketing of alcohol products is regulated by Alcohol Act (1143/1994). Marketing of medicines is regulated by the Medicines Act and Decree (395/1987).

Section 25

Protection of minors

Teleshopping broadcasts may not encourage minors to purchase or lease goods or services.

Best practices regarding marketing targeting minors is regulated by the Consumer Protection Act, Chapter 2, Section 2.

Section 26

Sponsorship of programmes and services

A sponsor may not influence the content of sponsored audiovisual media services or radio programmes by placing programmes in the schedule in a way which would affect the editorial liability or independence of an audiovisual media service broadcaster or radio broadcaster.

The sponsor's name or trademark must be displayed clearly at the beginning or end of sponsored audiovisual programmes or radio programmes.

Sponsored audiovisual programmes or radio programmes may not encourage the purchase or lease of the sponsor's or a third party's goods or services by alluding to them specifically and in an advertisement-like or other manner.

Section 27

Prohibited sponsorship

A business engaged primarily in the production or marketing of tobacco products may not sponsor programmes, audiovisual media services or radio broadcasting.

If the sponsor is a business engaged in the production or sale of medications or medical care, its name or trademark may be displayed in connection with 1194 No. 306, taking into account the regulations set forth in Section 26.

Medical products or methods of care which are available in Finland only when prescribed by a doctor may not be mentioned.

News or current affairs programmes may not be sponsored.

Section 28

Product placement

Placement of a product, service or trademark in an audiovisual programme (product placement) in exchange for consideration is prohibited.

In exception to Subsection 1, product placement is permitted:

- 1) in films;
- 2) in movies or series made for an audiovisual media service;
- 3) in sports programmes;
- 4) in light entertainment programmes.

Subsection 2 does not apply to product placement in children's programmes, or to businesses primarily engaged in the production or marketing of tobacco products, or to methods of medical care which are available in Finland only when prescribed by a doctor.

Section 28

Appurtenances and prizes

Provision of appurtenances or prizes at no cost for use in audiovisual programmes is considered sponsorship if they have significant value.

Product placement referred to in Subsection 1 is permitted in programmes other than children's programmes.

Section 28 b

Implementation of product placement

In implementing product placement it is prohibited to:

- a) influence the content of programmes or their scheduling;
- b) encourage the public to acquire goods or services;
- c) specifically allude to products in a manner similar to advertising or otherwise;
- d) unnecessarily emphasize products.

The public must be clearly notified by the use of text or the media service broadcasters' trademark when product placement is used in an audiovisual programme. The notification must be displayed at the beginning and end of the audiovisual programme, and at the end of every commercial break in the programme. The notice may not be similar to an advertisement.

Notification of product placement is not required if the media service broadcaster or its affiliate has not produced or ordered the audiovisual programme in question and information about product placement cannot be obtained without unreasonable inconvenience.

Section 29

Time restrictions on teleshopping broadcasts and television advertising

Time allocated to advertisements and teleshopping broadcasts may not exceed 12 minutes per hour, between each hour on the hour, with the exception of channels which broadcast solely teleshopping broadcasts.

Subsection 1 does not apply to a television broadcaster's notices about its own audiovisual programmes and related products, notices related to sponsorship, product placement or during programme times reserved for teleshopping broadcasts as referred to in Section 32.

Section 30

Time restrictions and distinction of content in radio advertising

Radio advertisements must be distinguished from radio programmes by the transmission of a sound indicator or in another clearly identifiable manner. Radio advertising may not exceed 10% of daily broadcasting time. Radio broadcasts may contain no more than 24 minutes of advertising during two consecutive hours.

Section 31

Ideological and social advertising

Advertising intended to further and publicize an idea or ideology or the visibility of the advertiser or an individual's public image (ideological and social advertising) must be distinguished from audiovisual programmes by an audio signal or image or by using a split screen image. Ideological and social advertisements must be placed between audiovisual programmes or segments within them. They may also be shown during audiovisual programmes if it does not violate the integrity and value of the programme or the rights of copyright holders. Religious television broadcasts may not be interrupted by ideological or social advertising.

Section 19 Subsection 1 shall be applied as appropriate to ideological and social advertising.

Section 32

Programme positions allotted to teleshopping broadcasts

On channels not reserved exclusively for teleshopping broadcasts the time allotted to a teleshopping broadcast must be at least 15 continuous minutes.

Programme positions allotted to teleshopping broadcasts must be clearly identified by an image or audio signal.

Section 33

Channels reserved for teleshopping and promoting sales

Section 19 Subsection 1 shall be applied as appropriate to television channels which broadcast only advertisements, teleshopping broadcasts or promote the broadcaster's own audiovisual programmes.

Sections 16, 17 and 22 as well as Section 29 Subsection 1 shall not be applied to television channels which broadcast only advertisements, teleshopping broadcasts or promote the broadcaster's own audiovisual programmes.

Section 35

Regulatory authorities

The Finnish Communications Regulatory Authority will enforce this law and related regulations with the exception of Section 25. The Consumer Ombudsman will enforce Section 25. Based on the Consumer Protection Act the Consumer Ombudsman may intervene in commercial programming if it constitutes inappropriate marketing from the standpoint of consumers. The Consumer Ombudsman may intervene in advertising referred to in Section 31.

The Communications Regulatory Authority shall work in cooperation with comparable authorities in states in the European Economic Area or states which are a party to the

Council of Europe Convention on Transfrontier Television. This cooperation may include sharing information obtained under this Act with regulatory authorities in another state.

Section 38

Suspension of retransmission

The Government may order the suspension of retransmission of programmes broadcast from outside Finland if the programming repeatedly, manifestly, seriously and gravely violates the Penal Code (39/1889) Chapter 11 Section 10, or Section 19 Subsection 1 and 2 of this Act.

Retransmission may be suspended for a maximum of one month. If a broadcaster of programming referred to in Subsection 1 is located in a member state of the European Economic Area, suspension of retransmission must follow procedures in Article 2a (2) of the Audiovisual Media Services Directive. If the television broadcaster is located in a state which does not belong to the European Economic Area but is a party to the Council of Europe Convention on Transfrontier Television, suspension of retransmission must follow procedures in Article 24(1)(2) of the Convention.

This law comes into force on the 1st of May 2010. Section 12a of this law will be in force until the 31st of December 2010. Activities required to implement the law may be started before it comes into force.

Act No. 307 Amendment to Sections 25b and 48 of the Copyright Act

Adopted in Helsinki on April 30, 2010

By decree of the Government, a new Subsection, as defined in Act 446/1995, shall be added to the Copyright Act (404/1961) Section 24b adopted on the 8th of July 1961, and a new Subsection 5, as defined in Act 821/2005, shall be added to Section 48, as follows:

Section 25 b

In using short excerpts of television broadcasts as defined in Section 48, Subsection 5, news reports about an event of great interest to the public may be inserted in a work which is being broadcast.

48 §

Unless prohibited in Subsections 1-4, in reporting an event which is of great interest to the public a broadcasting company located in the European Economic Area may, after the event has concluded, use in its general news broadcast short excerpts from television broadcasts to which another broadcasting company has exclusive rights. An excerpt may also be used after the news broadcast in broadcasting to a subscription based audience. The source of the material must be mentioned unless practical reasons make it impossible.

This law comes into force on the 1st of May 2010.

Activities required to implement the law may be started before the law comes into force.